

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:09CV98-1-V
5:05CR211-V

DAGOBERTO SANTAMARIA FLORES,)
)
 Petitioner,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion for Certificate of Appealability (Doc. No. 10), filed August 18, 2010.

On August 17, 2009, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence. In his Motion to Vacate Petitioner alleged that this Court was "without jurisdiction to expose [him] to a sentence under the statutory penalty provision of 21 U.S.C. § 841(b)(1)(A) for a statutory penalty provision conviction under 21 U.S.C. § 841(b)(1)(c)" (Doc. No. 1.) On August 21, 2009, after conducting an initial review of Petitioner's Motion to Vacate, this Court concluded that Petitioner's claim was procedurally defaulted, or in the alternative, procedurally barred. (Doc. No. 2.) Petitioner filed a Motion to Reconsider (Doc. No. 4) which was denied on October 13, 2009. On December 11, 2009, this Court denied Petitioner's Motion for Certificate of Appealability with regard to the denial of his Motion to Reconsider. (Doc. No. 7.)

Undeterred, on July 12, 2010, Petitioner filed a second Motion to Reconsider. (Doc. No. 8.) On July 15, 2010, this Court denied Petitioner's second Motion to Reconsider. (Doc. No. 9.)

Petitioner has now filed a Motion for Certificate of Appealability with regard to this Court's denial of his second Motion to Reconsider. (Doc. No. 10.) After carefully reviewing the record, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right and has not established that jurists of reason would find it debatable whether this Court was correct in its procedural ruling. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong)(citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion for a Certificate of Appealability (Doc. No. 10) is **DENIED**.

Signed: September 1, 2010



Richard L. Voorhees
United States District Judge

